O. Tenancy/51
Pt. II

1951

File No.

Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Bombay Tenancy Agricultural Lands Act, 1948.

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Submitted.

2. One Shri V.S. Patwardhan had made an application on 5-8-1949 to the Mamlatdar of Athni, (presumably under section 3-A of the Bombay Tenancy Act, 1939 as continued in force in the Schedule to the Bom. Tency and A.L.Act, 1948) for a declaration that Balesha Sidrayya Hosemani and Balu Rayagounda Patil were not his protected tenants, in respect of S.No. 81 of Lingnur village (Formerly of the Miraj State) and then included in the Athni Taluka of the Belgaum District. It appears that the land was cultivated from 1929 to 1939 by Appayya Hosemani the uncle of Balesha; from April 1939 to March 1946 by one Bhimanna Shivappa and thereafter by the present tenants. There is ample evidence on the record of the T.A.K. who heard the proceedings to the effect that Appa-nna and Balesha were joint during the years 1929 to 1939, which led him to hold that Balesha was personally cultivating the land for six years immediately preceding first day of January 1938 and he accordingly held him to be a protected tenant under section 3 of the repealed Act as continued in the Schedule to the new Act. Curiously enough he declared both Balesha and Balu Rayagounda as protected tenants under this section. Against this order the landlord preferred an appeal to the Collector of Belgaum and it was pending on his file when due to territorial changes the Lingnur village was transferred to the Satara South District. The Collector of Belgaum thereupon transferred the appeal papers to the Collector of South Satara on 16-10-1950 and the appeal was heard and decided by the latter on 8-12-50. He reversed the order of the T.A.K.

and declared both the tenants as ordinary tenants

In view of G.C.R.D.No.7937/49 dated 22/11/1950 (which is based on R.L.A.'s opinion No.16060 dated 16-11-1950) the Collector of Satara S. considers that his orders in the appeal will have to be reversed and has requested Govt. to do so. The R.D. proposes to take action under the revisionery powers vested in Government under section 86 and has requested the R.L.A. to advise.

4-Cs.
M.V.V.
30/7.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948, Sections 76,86 and 3(a) in the Schedule.

In this case the order of the Collector appears to be ultra vires for two reasons -

(1) the proceedings pending before the Collector of Belgaum could not be transferred to the Collector of Sâtara; and

(2) under the Act no appeal lies against the order passed by the Mamlatdar under section 3(a).

Government cannot revise the order of the Collector under section 86 of the Bombay Tenancy and Agricultural Lands Act.(See Additional Secretary's opinion No.3384 , dated 23rd February 1951). Under section 76, sub-section (1) the power to revise an order of the Collector vests in the Bombay Revenue Tribunal. Consequently, the proceedings may be forwarded to the Revenue Tribunal for revising the order of the Collector.

Sd/- B.D.Mirchandani

Additional Secretary to Government.

U.R. to R.D.No. 4121, dated the 13th March 1951.

4-Cs.

M.V.V.
30/7.

R.I.NO.2174 dt.2-2-51.

Submitted with reference to the R.D. office note on pp. 5-6 ante.

2. It appears that an application under section 3-A of the Bombay Tenancy Act, 1939 as continued in force in the Schedule to the Bombay Tenancy and A.L.Act, 1948 forwarded by Shri Jalbhai Rustomji Vimadalal of Bombay to the Mahalkari, Gandevi Mahal, for a declaration that (1) Ravji Lala (2) Vasan Manga (3) Bhikha Morar and (4) Bai Rani were not his tenants, was rejected by the Extra Aval Karkun, Gandevi on the ground that the application was sent by post, and should have been presented in person . Shri Jalbhai has now approached Government for revision of the T.A.K's order, under section 86. The R.D. is of the view that since the Collector has no appellate powers against the orders of the Ex.A.K. and the B.R.T.will also have no revisional powers, there would be no objection to Govt. setting aside the order of the Ex. A.K. under sec. 86 and remanding the case for rehearing. The R.L.A. is requested to advise.

4-Ca.
M.V.V.
30/7.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.

Section 3-A.

As section 3A in the Schedule to the Bombay Tenancy and Agricultural Lands Act, 1948 only provides for making an application, the view taken by the Extra Aval Karkun that the application should have been presented to him in person is not correct. Government having no revisional jurisdiction in the matter, cannot set aside the order of the Extra Aval Karkun. Government may however bring the legal position to the notice of the Extra Aval Karkun and suggest to him to restore the application and to dispose of it on merits after hearing both the parties.

Sd/- B.D.Mirchandani,
Additional Secretary to Government.

U.R. to R.D. No. 6338, dated the 20th April 1951.

4-Cs.
M.V.V.
30/7.

Legal Department.

It appears from the letter to the Chief Secretary to the United States of Saurashtra at page 31 of the file that the Vahivatdar of the Saurashtra Government in respect of the villages in Barawala Chovisi has refused to give receipts for rent to the cultivators on the basis of the decision of the Bombay Revenue Tribunal that the Bombay Tenancy and Agricultural Lands Act, 1948 would not apply to lands held by the Saurashtra Government by virtue of section 88(1) (a) and that these villages were formerly held by certain rulers of Kathiawar States on Taluqdari or other allied tenure and that with the integration of Kathiawar States, Saurashtra Government has stepped into the shoes of the previous rulers who held these villages as Taluqdars. The question raised for the R.L.A.'s consideration is whether the view taken by the Bombay Revenue Tribunal that inasmuch as these lands are held by the Saurashtra Government the provisions of the Bombay Tenancy and Agricultural Lands Act do not apply is correct.

2. Section 88(1)(a) of the Bombay Tenancy and Agriculatural Lands Act, 1948 provides that nothing in the forgoing provisions of this Act shall apply to the lands held on lease from the Crown, a local authority or a Co-operative Society. Clause (12) of the Adaptation of Laws Order, 1950 provides that in any existing Provincial Law, any reference, by whatever form of words to His Majesty or Crown shall, when such reference is made in relation to the Government of India or any part thereof and with respect to the state of affairs existing or anything done or to be done on or after the appointed day, be either omitted or construed as a reference to India, Union, Government of India, State, Government of a State or Government as the subject or context may require. By the Adaptation of Laws(Amendment) Ordef,1950 dated 5th June 1950 for the word 'Crown' in section 21 of the Bombay Tenancy and Agricultural Lands Act, 1948, the word "Union" is substituted. Section 88(1)(a) has not been specifically

adapted with the result that it can be deemed to be adapted as provided under clause (12) of the Adaptation of Laws Order, 1950. According to the subject or context in which th word 'Crown' has been used in section 88(1)(a) it appears that that word will have to be adapted as the 'Bombay State' and this is apparent from the follwoing words, "Local Authority or a Co-operative Society". Consequently, the lands held by the Saurashtra Government would not fall under section 88(1)(a) and they would be governed by the provisions of the Act. Since however, the point is not quite free from doubt a review application as suggested by Shri K.B. Vasudev may be sent to the Bombay Revenue Tribunal for reconsideration of the point and the aforesaid legal position may be placed before it.

Sd/- B.D.Nimchandani

Additional Secretary to Government.

U.R. to R.D. No. 6672, dated the 26th April 1951.

4-Cs.

M.V.V.
30/7.

R.I.No.4892 dt.12.3.51.

Submitted with reference to R.D. office note dated 8.3.51.

2. By Govt. Ordrs, R.D.No.8366/45-F and No. 8367 /45-F dated the 16th July 1948 Government has in exercise of the revisional powers under section 28 of the Bom. Tenancy Act, 1939 directed the restoration of possession of certain land to the section 4 protected —— tenants. It appears that these orders were passed without hearing the existing tenants on the lands. Neither were these tenants in possession were made parties to the proceedings at any stage either before the tenancy Aval Karkun or the District Deputy Collr. in appeal. After Govt. passed the above orders, these tenants in actual possession filed Civil Suits in the Court of Civil Judge J.D. at Sambusar for permanent injustion to restrain the defendent protected tenants from disturbing their possession and other reliefs. The Civil Judge granted the injunction. On appeal the D.J. Breach has confirmed the lower Court's order. The reasons given by the D.J., inter alia, on point No.(1), raised by him is that, since the defendants who were the tenants in actual possession, and were sought to be dispossessed by the Government order, were not parties to any of the proceedings before the Tenancy Aval Karkun, the D.D.C. or Govt., the orders of Govt. are ultra vires and not binding upon them. The evicted protected tenants have now approached Govt. for restoration of lands to them as per Govt. orders above. The R.D. considers that the decision of the D.J. is in conformity with the High Court decision in S.A.No.1007, of 1949 which was considered by the R.L.A. in his opinion No. 2078, dated 3.2.1951, but that since the D.J. has held the Govt. orders

P.T.O.

as ultra vires, Govt.'s action on the lines of the one suggested in the R.L.A's opinion, namely hearing the parties afresh, would not be legal. Before the applicants are informed that it is open to them to approach the High Court in revision against the D.J.'s decision, The papers are referred to the R.L.A. for advise.

4-Cs.

M.V.V.
30/7...

Office of the R.L.A.

Since the tenants in actual possession were not made parties to the proceedings either before the Tenancy Aval Karkun or the District Deputy Collector in appeal the R.L.A's opinion No.2078 dated 3-2-1951 would not be applicable. The view taken in the R.D. office note dated 8-3-1951 is correct.

Sd/- J.R.Dhurandhar,
14.5

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7644, dated the 15th May 1951.

4-Cs.
M.V.V.
30/7.

L.D.R.I.No. 6 dt. 2.1.51.

Submitted.

2. Please see the letter of the Collector of Ratnagiri, dated 29-11-1950.

The Collector of Ratnagiri considers that a "permanent tenancy" is an interest in the land and as such a permanent tenant can sell his interest. He is, however, doubtful whether permission can be granted for the transfer of such interest under the proviso to section 63(1) of the Bombay Tenancy and Agriculatural Lands Act, 1948 in favour of a non-agriculturist from another village, since according to him the agriculturist envisaged in this provision is of the same village. The U.S. , R.D. considers that the term agriculturist cannot have the restricted meaning ascribed to it by the Collector. The R.L.A. is requested to advise.

4-Ca.
M.V.V.
30/7.

Legal Department.

Seen and returned.

The view taken by the Under Secretary, Revenue Department is correct.

Sd/- B.D.M.

itional Secretary to Government.

U.R. to R.D. No. 5496, dated the 5th April 1951.

4-Cs.
M.V.V.
30/7.

R.I.No. 8340 dt. 26.4.51.

Submitted.

Please see Addl. Secy's opinion No. 5496, dated 5-4-1951. The R.L.A. is now requested to advise on point (1) in R.D. office note on p.3 ante.

The question for consideration is whether permission under section 63(1) of the Bom. T. & A.L. Act 1948, can be granted to a permanent tenant desiring to assign his tenancy.

Under clause (j) of section 108 of the Transfer of Property Act in the absence of a contract or local usage to the contrary a lessee may transfer absolutely, the whole or any part of his interest in the property. A permanent tenant who under the terms of his tenancy or local usage of the area is not prohibited from assigning his interest would therefore be entitled to assign such interest. Such a right has been saved under section 27(1) of the Bombay Tenancy and Agricultural Lands Act, 1948. The words " such sale" in the proviso to sub-section (1) of section 63 refers to sale of the land as well as any interst therein. The view taken in the R.D. office note on point (1) at page 3 ante is correct. There would be no objection to Collr. granting permission under sub-section (1) of section 63 provided that necessary rules are made under proviso to the said section 63 (1) prescribing the conditions subject to which such assignment may be made.

4-Cs.
M.V.V.
30/7.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.

Sec. 63(1). Whether a protected tenant is entitled to sale his interest in the tenancy.

Seen and returned.

The draft reply on point No.1 at page 9 ante is in order.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D.No. 7796, dated the 17th May 1951.

4-Cs.

M.V.V.
30/7.

Bombay Tenancy and Agricultural Lands Act,1948, sections 63 and 64.

It appears that the Civil Judge,Junior Division,Pimpalgaon, auctioned an agricultural land in favour of a non-agriculturist in execution of a decree of a Civil Court and has requested the Collector to grant permission to the sale. The Collector considers that section 63 of the Bombay Tenancy and Agricultural Lands Act completely bars the sale of agricultural lands in favour of non-agriculturist even if it be in pursuance of execution of a decree of a Civil Court and consequently, whenever an agricultural land is required to be sold in pursuance of execution of a decree of a Civil Court the Civil Court should first get the price fixed from the Tribunal under section 64 and then follow the procedure of sale as laid down in sub-section (2) of section 64. R.D. considers that section 64 does not apply and the R.L.A. is requested to advise.

2. The view taken by R.D. is correct. Section 64 of the Bombay Tenancy and Agricultural Lands Act applies only to voluntary sales of agricultural land by the landlords. The sale of an agricultural land in execution of a decree of Civil Court is an involuntary sale. Consequently, section 64 will have no application to such sales. Section 63 bars the sale of agricultural land even in execution of a decree of a Civil Court unless it be in favour of a person who is an agriculturist. The Civil Court should therefore insert a condition in the advertisement of such sales that only agriculturists would be allowed to bid and in case they are not agriculturists, they should secure permission of the Collector under rule 25 of the Bombay Tenancy and Agricultural Lands Rules, 1949, read with the proviso to section 63, sub-section (1).

3. The papers referred to at 'A' in the R.D. office note at pages 7-8 ante, have been returned to that Department with U.R.No.16858, dated the 29th November 1950 and the relevant amendment has been incorporated in clause 6 of the Bombay Tenancy and Agricultural Lands (Amendment) Bill, 1951 (L.A. Bill No.XIV of 1951).

Sd/- B.D.M.
Additional Secretary to Government.

U.R. to R.D.No. 4213, dated the 14th March 1951.

4-Cs./M.V.V./3C.7

[redacted].

Legal Department.

Bombay Tenancy and Agricultural Lands Act,1948.

Jadid grantees whether tenants..

The question raised for the R.L.A's consideration is whether section 9 of the Bombay Tenancy and Agricultural Lands Act which prohibits recovery by the landlord of the rent in terms of service or labour from the tenant is applicable to Inam or Watan lands held by pot-inamdars or Jadid grantees.

2. Section 4 of the Bombay Tenancy and Agricultural Lands Act provides that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant of such land if such land is not cultivated personally by the owner and if such person is not one falling under any of the clauses (a),(b) and (c) of that section. "When a person is deemed to be something, the only meaning possible is that whereas he is not in reality that something the Act requires him to be treated as if he were". (See 32, Bom. L.R. 361). Therefore, although a person is not really a tenant he would be considered a tenant under the Bombay Tenancy and Agricultural Lands Act provided he is lawfully cultivating the land belonging to another person, and does not fall under any of the clauses (a), (b) and (c) of section 4. But to attract the provisions of section 4, what is necessary is that such person must be lawfully cultivating the land and that land must belong to another. Pot-inamdars or Jadid inamdars would be considered to be the owners of the lands granted to them so long as the grants are not revoked.,Consequently, it appears that the Jadid or Pot-inamdars cannot be considered to be persons lawfully cultivating the lands belonging to other persons within the meaning of section 4 . The view taken by R.D. that section 4 applies to the case of pot-inamdars or Jadid inamdars is, therefore, not correct.

3. Shri R.A.Kulkarni appears to rely on section 9 sub-section (1) of the Bombay Tenancy and Agricultural Lands Act. That sub-section provides : "Any landlord receiving rent from any tenant in terms of service or labour shall within twelve months from the date of coming into force of this Act apply to the Mamlatdar for commuting such rent into cash. Such application shall be made in such form as may be prescribed." The term 'landlord' in this provision denotes the relationship of landlord and tenant. There is no such relationship existing between an Inamdar and his pot or Jadid Inamdars. For Pot and Jadid inamdars are not tenants of the inamdar either in fact or under the extended definition of tenant under section 4 of the Act. Consequently, although a Jadid or pot inamdar may be doing service to the Inamdar in consideration of which the land may have been granted to him, section 9 sub-section (1) will have no application.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 7627, dated the 14th May 1951.

4-Cs.

M.V.V.
30/7.

L.D.R.I.No.5756 dt.22-3-51.

Submitted.

By G.N.,R.D.No.628/49, dated the 25th October 1949 the management of the Estate of Thakore Saheb Shri Kushalsinghji Naharsingji of Takatuka Jagir was taken over under management under sec.44 of the Bom. Tenancy & Agri. Lands Act, 1948. The Collr. of Sabarkantha has now reported that the Thakore Saheb died on 11-2-1951 and has requested that his successor may be declared as an estate holder and that the said notification may also be amended. The R.D. considers that in view of sec. 60 it is not necessary to amend the notification, nor to declare the deceased Thkore's successor as an estate holder. The R.L.A. is requested to advise.

4-Cs.
M.V.V.
31/7.

Legal Department.

Bombay Tenancy & Agri. Lands Act, 1948.
Sec. 60.

Notifying Successor to the estate holder.

Seen and returned.

The view taken in the Revenue Department Office note dated the 22nd March 1951 is correct.

Sd/- B.D.K.

Additional Secretary to Government.

U.R. to R.D. No. 7645, dated the 15th May 1951.

4-Cs.

M.V.V.
31/7.

Legal Department.

R.I. No.1039 dt. 17-1-51.

Submitted.

2. In his article in the cutting of "Bharat" dated 20-11-1950 Shri D.T.Deshpande has stressed the need of an amending legislation so as to allow the execution proceedings for possession of land pending long before the Bombay Tenancy and Agricultural Lands Act, 1948, came into force, to proceed with without in any way being affected by this Act. The R.D. considers that the execution proceedings (Darkhast) pending long before the Act was put into operation are not affected under the Act. The R.L.A is requested to advise.

4-Cs.

M.V.V.
31/7.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948: section 89(2)(b) (i) & (ii) Pending execution proceedings whether affected.

The view taken by Revenue Department is correct in view of section 89(2)(b)(i) and (ii) of the Bombay Tenancy and Agricultural Lands Act, 1948.

Sd/- B.D.M.

Additional Secretary to Government.

U.E. to R.D. No.7833, dated the 17th May 1951.

4-Cs.

M.V.V.
31/7.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.
Sections 32,37,40,etc.

Administration of Evacuee Property Act, 1950.

Whether protected tenancy rights in respect of evacuee property are personal.

H.M.R.D. desires the R.L.A. to consider whether a protected tenant's rights are personal, and ~~xxxix~~ are extinguished by his leaving the land. Under section 15 of the English Rent Act of 1920, the statutory tenancy rights are guaranteed so long as the tenant retains possession. This provision was considered in Brown vs. Brash and Embrose. 1948; 2K.B. 247, and it was held : "A 'non - occupying' tenant prima facie forfeits his status as a statutory tenant under the Rent Restrictions Act, but the term 'non-occupying tenant' cannot ~~xxxx~~ cover every tenant who, for however short a time, or however necessary a purpose, or with whatever intention as regards returning, absents himself from the demised premises. But absence may be sufficiently prolonged or unintermittant to compel the inference prima facie of a cesser of occupation. The issue is one of fact and of degree." It is an admitted principle of rule of construction of statutes that where the acts are not in pari materia', it is fallacious to take the construction which has been put upon one as controlling the construction of another. (See Dewhurst vs. Feilden. 66 R.R. 696 Maule J.) The Bombay Tenancy and Agricultural Lands Act,1948, differs in many respects from the English Rent Restrictions Act. Under section 32, sub-section (1); "Notwithstanding anything contrary in any law, usage or contract, but subject to the provisions of section 6, a protected tenant shall, at any time, be entitled to purchase from the landlord the land held by him as a protected tenant." Under section 39: "A protected tenant can apply for recovery of possession from his landlord if he has failed to comply within a reasonable time with the provisions of section 37 i.e. if he has failed to use the land for any of the purposes specified in the notice given under sub-section (1) of section 34. Section 40 provides for continuation of tenancy

on.....

on the death of a protected tenant. Reading these provisions together it is apparent that a protected tenant gets a vested interest in the demised land, which interest can be inherited by his heir or heirs. Section 3 provides that the provisions of Chapter V of Transfer of Property Act, 1882, shall, in so far as they are not inconsistent with the provisions of this Act, apply to the tenancies and leases of lands to which this Act applies. As stated by the Additional Secretary in his last opinion, the ordinary principle contained in Cantler vs. Henderson (7 Q.B.D. p.s 575) will apply to such leases and the mere fact that the tenants have left for Pakistan will not alone be sufficient to amount to an implied surrender by tenants of their tenancies even if the tenants are held to be protected tenants. This inference is further supported by section 18 of the Administration of Evacuee Property Act, 1950, whereunder the tenancy rights of an evacuee are not to be extinguished. In the circumstances, the rights of a protected tenant are not merely personal rights and they do not extinguish even if such tenant leaves the land. Section 65, sub-section (1) of the Bombay Tenancy and Agricultural Lands Act empowers Government to assume management of the land in the event of its being left unclutivated through the default of the tenant, or any other cause whatsoever for any two consecutive years.

Sd/- J.R.Dhurandhar,
16/5.

Remembrancer of Legal Affairs.

H.M.(R.D.).

4-Cs.

M.V.V.
31/7.

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Sd/- J.R.Dhurandhar,
16/5.

Remembrancer of Legal Affairs.

H.E.(R.D.).

4-Cs.

H.V.V.
31/7.

Office of the R.L.A.

Bombay Tenancy Agricultural Lands Act, 1948. Sections 6 & 12.

Rents fixed by the ~~Saurashtra~~ Saurashtra Government.

Gounjar village.

It appears that the 'Paripatra' (circular) at slip 'x' was issued by the Revenue Department of the Saurashtra Government in relation to section 18, sub-section (1) of an Ordinance regarding reservation of land to Girasdars for cultivation at home. According to this circular a Girasdar is entitled to rent which shall not exceed Rs.3/- per Bigha of Jarayat land or Rs.6/- per Bigha of Bagayat land, and if he has not sufficient land for cultivation at home, he is entitled to an increase up to 50 per cent of the above rent. Probably this fixation of rent would be relatable to certain provision of the Ordinance ~~at~~ to give effect to which this Paripatra was issued. Under article 8 of the Provinces and States (Absorption of Enclaves) Order, 1950, the Ordinance passed by the Saurashtra Government lapsed and the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, were deemed to have applied to the area, with the result that the fixation of rent under the Paripatra whether statutory or otherwise became inoperative and the terms and conditions of tenancy would be regulated by the provisions of the Bombay Tenancy and Agricultural Lands Act. The agreement or the usage, if any, existing in respect of rent payable to the Girasdars prior to the Ordinance and Paripatra issued by the Saurashtra Government revived after the Provinces and States (Absorption of Enclaves) Order, 1950, came into operation and the tenants would be liable to pay such rent subject to the maximum rate fixed under section 6 of the Bombay Tenancy and Agricultural Lands Act. (See section 7). If the tenants dispute it, they will have to apply under section 13 sub-section (1) for the determination

of the reasonable rent. It is not known whether any notification under section 8 sub-section (1) in respect of commutation of crop-share into cash has been issued by Government. If not Government may issue notifications under sub-section (1) and sub-section (2) of section 8.

Sd/- J.R.Dhuranhdar,
22/5.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6182, dated the 24th May 1951.

4-Ca.
M.V.V.
31/7.

Office of the R.L.A.

Application of B.T. & A.L. Act to watan lands.

R.L.A.'s opinion No.2791 dt./ 11.3.1949 and No. 1896 dt./ 31.1.1951.

Bombay Hereditary Offices Act, 1874 section 5.

The watan lands are service Inam lands. The watandar is not the absolute owner of lands. The alienation of such lands is governed by section 5 of the Bombay Hereditary Offices Act. The provisions contained therein is a special rule of law and the general provisions contained in the Bombay Tenancy and Agricultural Lands Act cannot override or modify the said rule. The view taken in R.L.A's Opinion, dated 11th March 1949 is correct. The passage at A in the R.L.A.'s Opinion No. 1896, dated 31st January 1951 is not correct, in so far as it is inconsistent with the opinion of 1949 and the word notwithstanding in that passage should be replaced by the words 'subject to'.

Sd/- J.N.Dhurandhar,
29/5.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8430, dated 29th May 1951.

4-Cs.
H.V.V.
31/7.

R.I. No. 10571 dt. 30-5-51.

Submitted with reference to R.D. office note on p.9 ante.

2. The question for consideration is whether the talukdars are entitled to recover 'vero' (plough cess) in addition to crop-share rent from their tenants. The Settlement Commr. considers that since the rent in crop-share is one fifth to one-tenth of the total produce, as against the maximum of one-fourth prescribed under sec. 6 of the Pom. Tenancy & A.C. Act, 1948, the 'vero' can be taken as a consideration in money in addition to the consideration in kind and may be allowed to be recovered. The R.D. considers that in view sec. 11 which prohibits the recovery of 'vero', its as a component part of rent would not be proper and that if the talukdar's income is reduced as a result of the prohibition to recover vero it is open to him to apply to the Mamlatdar for fixation of reasonable rent. The R.L.A. is requested to advise.

4-Ca.
M.V.V.
31/7.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, Sections 2(16) 11.

Vero - recovery of -

The view taken by the R.D. is not correct. The view taken by the Settlement Commissioner is correct. Although the plough cess is called a vero, it appears that the talukdar is recovering it as a part of the consideration in cash from the tenants for the use and occupation of the land. It is therefore properly speaking part of the rent as defined in section 2(16) of the Act.

Sd/- B.H.E.

Additional Secretary to Government.

U.S. to R.D. No. 8309, dated the 5th June 1951.

4-Cs.

M.V.V.
31/7.

LEGAL DEPARTMENT.

Bombay Tenancy and Agricultural Lands Act, 1948, section 64.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, sec.7(1)

Section 7, sub-section (1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, provides: "No person shall transfer any fragment in respect of which a notice has been given under sub-section (2) of section 6 unless thereby a fragment becomes merged in a contigous survey number or recognised sub-division of a survey number." Under section 64, sub-section (2) of the Bombay Tenancy and Agricultural Lands Act, 1948, a tenant in actual possession of the land has a prior claim for purchase of the land when his landlord wants to sell it. But as section 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 is a provision of special Act according to the general principle of law it will override the provisions in a general enactment. The provisions of section 64 of the Bombay Tenancy and Agricultural Lands Act, 1948, will therefore have to be read subject to the provisions of section 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 9113, dated the 9th June 1951.

4-Co.
M.V.V
31/7.

OFFICE OF THE R.L.A.

Bombay Tenancy and Agricultural Lands Act, sections 6 & 12. R.L.A.'s opinion No.12622, dated 9-11-1949, and R.L.A.'s opinion No.3333, dated 23-2-1951.

There is not inconsistency between R.L.A's opinion No. 12622, dated 9th November 1949 and his opinion No. 3333, dated 23rd February 1951. The case considered in the former opinion related to the wrongful eviction of a tenant contrary to the provisions of the Bombay Tenancy and Agricultural Lands Act; while that in the latter opinion related to the fixity of rent for a period for which it was validly fixed and guaranteed under section 12 clause (9) of the repealed Bombay Tenancy Act, 1939. Section 12, sub-section (9) of the repealed Act provided: "Every such order passed either by the Mamlatdar or by the First Class Judge, Senior Division, in appeal shall hold good for a period of five years and shall not called in question in any court during that period." It is apparent from this provision that the rent fixed is statutorily guaranteed for a period of 5 years, and section 6, sub-section (1) of the Bombay Tenancy and Agricultural Lands Act does not expressly provide for its application notwithstanding the rent statutorily guaranteed under the repealed Act. It was for this reason that the R.L.A. in his last opinion stated that section 6, sub-section (1) didn't not apply. The view taken in R.D. note is not correct.

Sd/- J.R.Dhurandhar,
5/6.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6374, dated the 6th June 1951.

4-Cs.
M.V.V.
31/7.

R.I.No.7833 dt. 16-4-51.

Submitted.

2. In Tenancy Appeal No.641 of 1949 the Collr. of Baroda appears inclined to the view of Shri Vin (Advocate) that under sec. 2(10) of the Bombay Tenancy & A.L. Act, 1948 Govt. could appoint such other officers by name and cannot appoint a class of persons to perform the duties of a Mamlatdar under the Act by a notification. He has therefore endorsed a copy of his order to Govt. with a request to consider whether G.N., R.D.No.1118/24(c) dated the 31st March 1941 issued under sec. 2(5) of the Bombay Tenancy Act, 1939, whereby all tenancy Aval Karkuns in the state were appointed to perform the duties of the Mamlatdar, needs to be cancelled. A fresh notification No.782/49, dated 11-4-1951 under sec. 2(10) of the Act has been issued. The R.D. considers that sec. 2(10) of the Act is ~~xxxxx~~ wide enough to enable Govt. to issue a general notification. Before the Collr. is informed accordingly the R.L.A. is requested to advise.

4-Cs.

M.V.P.
31/7.

Office of the R.L.A.

Bombay Tenancy A.L.Act, 1948, Section 2(10).

There is no substance in the argument advanced by the Collector of Baroda. The view taken by the Revenue Department appears to be correct. Government Notification, Revenue Department, No. 782/49, dated the 11th April 1951, is free from any legal objection.

Sd/- J.R.Dhurandhara,
19/6.

Remembrancer of Legal Affairs.

U.H. to R.D. No. 9665, dated the 19th June 1951.

L-Cs.
H.V.V.
31/7.

Bombay Tenancy and Agricultural Lands Act, 1948, secs. 14(1) & 25.

Notice for terminating tenancy.

Section 14(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, provides that "the tenancy of any land held by a tenant shall not be terminated unless such tenant has committed any of the acts enumerated in clauses (a) to (e) of that sub-section. Clause (a) refers to failure on the part of the tenant of xpay in any year, within fifteen days from the day fixed for the payment of the last instalment of the land-revenue, the rent of the land due for the year. Section 29(2) provides that no landlord shall obtain possession of land held by a tenant except under an order of the Mamlatdar and for obtaining such order he shall make an application in the prescribed form. Section 25 of the Act is as follows:-

> "25. Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceedings to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding, within fifteen days from the date of order, and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated."

Having regard to the language of sections 14(1) and 25 it appears that the tenancy does not automatically terminate by the failure of the tenant to pay the rent within 15 days of the day fixed for the payment of the last instalment of land-revenue. In order words section 14(1) contemplates that in the event of the tenant failing to pay the rent within time, which makes the tenancy liable to termination, the landlord has to do an act for terminating the tenancy and thereafter apply under section 29(2) for obtaining possession from the tenant. By section 3 of the Act the provisions of Chapter V of the Transfer of Property Act, 1882, in so far as they are not inconsistent with the provisions of the Bombay Tenancy and Agricultural Lands Act, have been applied to the tenancies and leases of lands to which the latter Act applies. Under section

111 in Chapter V of the Transfer of Property Act provision has been made for the determination of leases and only clauses (g) and (h) of that section are relevant in this connection. It appears that the landlord will have to give a notice under clause (h) for terminating the lease to a tenant who has not paid rent by the date provided for in section 14(1)(a)(i) of the Bombay Tenancy and Agricultural Lands Act. Notice will be necessary under clause (g) even if the lease provides an express condition that on failure to pay the rent within time the lessor can re-enter the land.

However, as the question is before the Bombay Revenue Tribunal, its authoritative ruling may be awaited.

Sd/- B.D. Kirchabdani,

Additional Secretary to Government.

U.R. to R.D. No. 9307, dated the 13th June 1951.

4-Cs.

M.V.V.
31/7.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

Sections 32, 63, 64 and 65.
vires of - -

The question for consideration of the R.L.A. is whether sections 32, 63, 64 or 65 of the Bombay Tenancy and Agricultural Lands Act, 1948, are ultra-vires as contended by the North Kanara Landholders' Association, Kumta N.K., in its representation to the President of India and should therefore be deleted from the Statute book.

2. Attention is invited to Additional Secretary's opinion, dated 29-11-1948 wherein the vires of the Bombay Tenancy and Agricultural Lands Act in general x was considered by the Additional Secretary. Sections 32 and 64 in particular have already been considered in Additional Secretary's opinion dated 25-9-1950 wherein it has been stated that it would be possible to defend the validity of these sections. Section 63 prohibits sale, gift, exchange, lease or possessory mortgage of any land or interest therein in favour of a person who is not an agriculturist. This section can also be supported on the same grounds advocated in the said opinion, namely that it is within the legislative competence of the State Legislature under item No. 18 in List II in the Seventh Schedule to the Constitution i.e. transfer and alienation of agricultural land and that Legislature intends agricultural lands should not pass into the hands of non-agriculturists. These restrictions cannot be said to be offending against the provisions of Article 19(1)(f) of the Constitution which guarantees to all citizens the right to acquire hold and dispose of property as it is clearly covered by the exception laid down in clause (5) of the Article as being a reasonable restriction. (See Charanjit Lal vs. Union of India A.I.R. 1951. Sc.41). Section 65 sub-section (1) empowers the

State .....

State Government to assume management of any land which has remained uncultivated for any ~~xxx~~ two consecutive years, through default of either the landlord or tenant or any cause whatsoever. Under sub-section (2) of this section on the assumption of such management the land vests in the State Government during the continuance of the ~~xxxxxxxxx~~ and the provisions of Chapter IV apply mutatis mutandis to such land. This section is clearly within the legislative competence of the State Legislature under the same item referred to above as being for improvement of land and also under item 14 - Agriculture. The power has been taken to Government in the interest of good husbundry. Under section 48 which has been ~~xxxxx~~ made applicable to such cases provision has been made to pay to the landholder the balance of the sums received in respect of the ~~xxxx~~ after deducting the necessary expenses. These provisions are, therefore, also in consonance with Article 31(2) of the Constitution and cannot be challenged. Consequently none of the sections 32,63,64 or 65 are open to any legal ojection. Whatever doubt can be raised regarding the validity of the provisions of this Act as being opposed to the fundamental rights, they are now removed by the Constitution (First Amendment) Act, 1951. The question however, is before the High Court.

Sd/- J.R. Dhurandhar,
26/6.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10190, dated the 27th June 1951.

4-Cs.
M.V.V.
31/7.

Office of the R.L.A.

Bombay Tenancy & Agricultural Lands Act, 1948 - sections 44 & 61.

Bombay Tenancy & Agricultural Lands Rules, 1949 - Rule 31(3).

Continuance of management.

Under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948, Government has assumed the management of the village Bhachar and Kalupur for the purpose of improving the economic and social conditions of the peasants and ensuring full and efficient use of the land for agriculture. (Vide G.N. R.D. No. 1139/49(b), dated 4-4-1950). Rule 31, sub-rule (3) of the Bombay Tenancy and Agricultural Lands Rules, 1949, which was added with effect from 11-12-1950 requires that in the case of the estate the management of which was assumed before this rule came into force and in which the instructions laid down in Government Circular, Revenue Department No. 3389/49, dated 7-8-1950 were not observed, the Collector shall, as soon as possible, hold an inquiry and record the statement of the landholder or any person acting on his behalf as to why the management shall not be continued and shall submit the record and proceedings of the inquiry with his report to the State Government. The Collector of Banas Kantha has accordingly submitted his report and it is proposed by Government to continue the Management. The landholders, however, have filed an application in the High Court, being Miscellaneous Civil Application No. 1793 of 1950, inter alia on the ground that the assumption of management is an unreasonable restriction of their right to hold and dispose of property and therefore void in view of article 19 of the Constitution. In these circumstances the question raised for R.L.A.'s consideration is whether the continuance of management as proposed by Government would be proper.

2. The management of the estates of (1) Thakarni Bai Shrimati Ladbai and (2) Kumaras Vajesinhji, Madhuba and

....Ranmalji have already been assumed under Government Notification, Revenue Department No. 1139/49(b), dated 4-4-1950. Sub-rule (3) of rule 31 of the Rules only provides for procedure to be followed in order to enable the State Government to satisfy itself whether the management should be further continued or discontinued under section 61 of the Act. The decision of Government to continue the management arrived at on the basis of such inquiry conducted under the provision would in no way be affected by the suit filed by the landholders, and in the absence of any prohibitory order of the High Court would there be no objection to continue the management as before.

Incidentally it may be pointed out that sub-rule (3) of rule 31 does not require that the State Government after scrutinising the report of the Collector shall pass any formal order declaring its decision to continue the management although it may be necessary from administrative point of view.

Sd/- J.R.Dhurandhar,
27/6.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10303, dated the 28th June 1951.

4-Cs.
H.V.V.
31/7.

OFFICE OF THE R.L.A.

Ghodbunder, Mira and Bhayindar lands.

Permanent ~~tenants~~ holders in-effect of Salsette Estates Bill.

As observed by Secretary, R.D. the introduction of survey rates will not affect the contractual rights between the lessees of Government and their tenants. The position would be stabilised after the Salsette Estates (Land Revenue Exemption Abolition) Bill becomes an Act. The permanent tenants and sutidars would become occupants and the other tenants would continue to get the protection of the Bombay Tenancy and Agricultural Lands Act, 1948. Consequently no action appears necessary.

Sd/- J.R. Dhurandhar,
4/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10631, dated the 4th July 1951.

4-Cs.
M.V.V.
31/7.

OFFICE OF THE R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

Surrender of protected tenancy rights under a compromise for a new lease.

The sub-tenants were recorded as protected tenants and as such were entitled to the benefits of the Bombay Tenancy and Agricultural Lands Act, 1948. By the compromise they surrendered all their valuable rights under the Act for the grant of a lease for a period of ten years. Besides the compromise has been acted upon and the tenants have paid the arrears of rent, withdrawn their suits for purchase of the lands and surrendered their protected tenancy rights. In view of these circumstances it would not be legally competent for the Collector and Court of Wards m to back out of the compromise on the ground that the terms of the lease for ten years are more favourable to the tenants. Gambhirsing is no doubt not a party to the compromise and would not be bound by it. However that is a matter between him or his mortgagee and the tenants and it would not be a ground for the Collector and Court of Wards to avoid the compromise. In these circumstances the Collector and Court of Wards should grant the lease to the tenants as per terms of the compromise.

Sd/- J.R.Dhurandhar,
9/7.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 10855, dated the 10th July 1951.

4-Cs.
M.V.V.
1/8.

Bombay Tenancy and Agricultural Lands Act, 1948.

Section 6(1)& (2): lower rate of rent in respect of villages managed under section 44.

The view taken by the R.D. is correct.

2. Section 6(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, fixes the maximum rent payable by a tenant in the case of irrigated land at one-fourth, and in the case of other land at one-third of the crop or its cash equivalent. The State Government has, however, under section 6(2) power by notification in the Official Gazette to fix a lower rate of the maximum rent payable by the tenants of lands situated in any particular area. It is, therefore, competent for Government to fix a lower maximum rent in any particular area; but the lower maximum rent so fixed would be applicable to all the lands situated in that area and not merely to lands belonging to a particular estate in that area. No discrimination between lands situated in the area can be made in respect of the prescribed maximum rent. Any notification under section 6(2) has therefore to be issued with reference to a particular area and not with reference to a particular estate; any such notification with reference to a particular estate would be clearly bad in law. "Area" is not defined in the Act, but having regard to its ordinary meaning, it will mean any compact or sizable tract or region. It need not necessarily be very large tract of land. Even a revenue viellage can be regarded as an "area" within the meaning of section 6(2). Therefore, if any estate forms a compact block and covers a revenue village or villages, it will be legally competent for Government to notify under section 6(2) for such village or villages lower maximum rates.

3. The power under section 6(2) was intended to be exercised for the relief of tenants in areas where economic and other factors justified fixing of maximum rates lower than those fixed by the Legislature under section 6(1). It would not be legal to exercise the powers under section 6(2) in favour of any particular area unless there are good economic and other reasons for making a distinction between

it and the neighbouring areas. Any arbitrary discrimination between different areas in the matter of fixation of maximum rents may offend against the guarantee of equality under Article 14 of the ~~xxxxxxxxx~~ Constitution.

Sd/- B.D.Mirchandani

dditional Secretary to Government.

U.R. to R.D.No. 10186, dated the 27th June 1951.

4-Cs.
M.V.V.
1/8.

Office of the R.L.A.

It appears that the Revenue Department File No. 3968/49F was forwarded to the Remembrancer of Legal Affairs (Shri P.M.Lad) by H.M.(R.D.) on 2nd June 1950 for discussing the view taken in R.L.A.'s opinion No. 2073, dated the 11th February 1950, as the H.M. was not inclined to agree with the view that "agricultural estate" in section 44 of the Bombay Tenancy and Agriculatural Lands Act, 1948, would not include its appendages such as chores office buildings etc. The view expressed in this opinion has been affirmed in Addl. Secretary's opinion No.5993, dated the 13th April 1951. The R.D. File is, therefore, returned herewith.

Sd/- J.R.Dhurandhar,
19/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11508, dated the 20th July 1951.

4-Cs.
M.V.V.
1/8/56.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948. Section 74A. Whether retrospective.

. Under section 74(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, an appeal against the order of Mamlatdar or Tribunal may be filed to the Collector in the cases specified therein. The Bombay Tenancy and Agriculatural Lands Act has been amended by Bombay Act XII of 1951 with effect from 24th April 1951. By this amending Act clause (2A) has been inserted in section 2 defining "Collector" as including an Assistant or Deputy Collector performing the duties and exercising the powers of the Collector under the Bombay Land Revenue Code, 1879, and also a new section 74-A has been inserted which provides:

> "The Collector may, after due notice to the parties, by order in writing, transfer any appeal pending before him or before any Assistant or Deputy Collector subordinate to him to any other Assistant or Deputy Collector performing the duties and exercising the powers of a Collector, and upon such transfer the Assistant Collector or the Deputy Collector, as the case may be, shall have power to hear the appeal as if it was orginally filed to him."

It is contended by Shri Sharangpani, a pleader of Poona, that appeals pending before the Collector on 24th April 1951 cannot be transferred by the Collector to an Assistant Collector or Deputy Collector as section 74-A cannot be given retrospective effect and the right of the appellants to have their appeals heard and decided by the Collector is a vested right which cannot be interferwed with. He relies for his contention on the decision in Raghunath Hanmant Mane v. Sadashiv Damodar Datar (52 Bom. L.R. 871). The R.L.A. is requested to advise.

2. The contention of Shri Sharangpani does not appear to be correct. Their Lordships of the Bombay High Court in deciding Raghunath Hanmant Mane v Sadashiv Damodar Datar (52 Bom. L.R. 871) that the amendment made by the Bombay Civil Courts (Amendment) Act, 1949, were prospective and applied only to suits filed after the

said.....

said amending Act came into force relied on the following observations of the Privy Council in the Colonial Sugar Refining Company v. Irving (1905 A.C. 369):

> "To deprive a suiter in a pending action of an appeal to a superior Trimunal which belonged to him as of right is a very different thing from regulating procedure. In principle their lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new Tribunal. In either case there is an interference with existing rights contrary to the well known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

Their Lordships did not dispute that in a pending action the Legislature could provide for appeal to a new tribunal, but were of the view that such intention of the Legislature must be clear and unambiguous. So far as the Bombay Civil Courts (Amendment) Act, 1949, was concerned, they, however, held that such intention was not clear. This is what they observed:

> "After all, it cannot be overlooked that the parties to the present suit had a vested right to come to this Court in appeal against the decree that would be passed in the suit and unless we are satisfied that section 6 clearly and unambiguously shows the intention of the Legislature to take away this vested right, we would not be justified in giving the amendments made by this Act retrospective effect."

In Raja Kulkarni v. State of Bombay 53 Bom. L.R.833 the Bombay High Court distinguished the Colonial Sugar Regining Company's case and held that Industrial Disputes (Appellate Tribunal) Act applied to pending proceedings. In the case under consideration it cannot be reasonably contended that the Legislature had not made its intention clear and unambiguous. For section 74-A inserted by Bombay Act XII of 1951 is as follows:

> "The Collector may, after due notice to the parties, by order in writing, transfer any appeal pending before him or before any Assistant or Deputy Collector subordinate to him to any other Assistant or Deputy Collector performing the duties and exercising the powers of a Collector, and upon such transfer the Assistant Collector or the Deputy Collector, as the case may be, shall have power to hear the appeal as if it was orginally filed to him."

The use of the word "pending" shows that the Legislature's

 intention.....

intention was that appeals pending on the date of the coming into force of the amending Act or at any time thereafter could be transferred by the Collector to an Assistant or Deputy Collector. Shri Sharangpani's contention, therefore, that the appeals filed to the Collector prior to the amendment of the Act and pending before him cannot be transferred to Assistant or Deputy Collector, is therefore not correct. Mitter J. in Shib Nath v. Porter (A.I.R. (1943) Cal 377) went even so far as to observe as follows:

> "In my judgment express words are not essential in order that a statute may apply to pending actions or proceedings. It is enough if that intention can be interfered, and for ascertaining the intention of the Legislature not only the meaning of words used in the enactment but also the object of the enactment must be kept in view. In fact the object of the enactment as gathered from its provisions would be a very improtant matter."

Section 74-A was inserted in the Bombay Tenancy and Agricultural Lands Act, 1948, with the very object of relieving the Collector of the burden of deciding appeals under section 74 by providing for their transfer to Assistant and Deputy Collectors. Therefore, considering the express language of section 74-A and the object of the amending Act, it can be held that the power to transfer appeals is exercisable in respect of all appeals including those which were filed before the coming into force of the amending Act.

Sd/- J.R.Dhurandhar,
23/7

Remembrancer of Legal Affairs.

UR..to R.D.No. 11609, dated the 23rd July 1951.

A-Cs.
M.V.V.
1/8/56.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

Sections2(10) & 8(1).

As under Government Notification, Revenue Department No.782/49, dated the 11th April 1951 issued under section 2(10) of the Bombay Tenancy and Agricultural Lands Act, 1948 all Aval Karkuns have been appointed to perform the duties of a Mamlatdar under the Act there would be no legal objection for the Aval Karkun, Viramgaon to determine the amount of commutation in accordance with the provisions of section 8(2) read with rule 5(3) of the Bombay Tenancy and Agricultural Lands Rules, on the applications made by the Mamlatdar-manager of the Patdi Estate.

Sd/- J.R.Dhurandhar,
1/8.

Remembrancer of Legal Affairs.

U.R.to R.D., No. 12371, dated the 2nd August 1951.

4-Cs.
H.V.V.
1/8.

Office of the R.L.A.

By authorising the Aval Karkuns under Government Notification No.782/49, dated the 11th April 1951 to perform the duties of the Mamlatdar the Aval Karkuns would be Mamlatdars under section 2(10) of the Bombay Tenancy and Agricultural Lands Act,1948 for the purposes of the Act and consequently the Aval Karkuns would be competent to do the work of the Tribunal under Government Notification No.6816/45-F, dated the 18th January 1949. There is therefore no question of redelegation. The view taken by Revenue Department is not correct.

Sd/- J.R.Dhurandhar,
2/8.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 12431, dated the 3rd August 1951.

4-Cs.

M.V.V.
1/8/56.

R.I.No.14813 dt.17.7.1951.

Legal Department.

Submitted with reference to R.'s office note on pp.3 - 4 ante.

2. The following is a typical case of the many cases decided by the Tenancy Mahalkari, Jhagadia.

It appears that one Shri Natwarlal Garbadas of Rajpipla had filed an application before the Mahalkari of Jhagadia on 1-5-1950 for possession of S.No. 112 of Padavaliya village under section 34 of the Bom. Tenancy and A.L. Act, 1948, on the ground of personal cultivation and had stated that he had given a year's notice to the protected tenant Shri Nariya Bhuriya. During the pendency of the proceedings the parties reached a compromise whereunder the protected tenant undertook to hand over the possession of the land before 31st March 1951 after the crops then standing upon the land were harvested. The compromise has been recorded on the file of the Mahalkari and below that appears the order dated the 5th October 1950 as follows :-

"The compromise is presented for possession as settlement is reached between the parties. It is agreable to both the parties. Therefore orders are passed as per compromise terms. The villages Talati to be ordered to make correction in the village records.

It appears the tenant has not handed over possession and the landlord has applied to the Mahalkari for execution of the order dated 5.10.1950. The collector considers that the order of the Mahalkari are not clear in as much it does not direct that from what date possession should be handed over and has raised a question whether the possession can be hanled over to the landlord , now. The D.G.P. to whom the matter was referred is of opinion that the order of the Mahalkari is in terms of the compromise and under the tenancy Act there is no provision for enforcing the agreement (compromise) and that the a new relationship of landlord and tenant would arise which cannot be terminated .

before ten years. The R.D. considers that it is not absolutely necessary that the order should by what date possession should be handed over and that the D.C.R's view that a new tenancy arises is wrong. That department therefore proposes to direct execution of the Mahalkari's order. The R.L.A. is requested to advise.

A-Cs.

M.V.V.
1/8.

Legal Department.

Seen and returned.

The view taken by the Revenue Department is correct.

Sd/- B.D.H.

Additional Secretary to Government.

U.O. to R.D. No. 12911, dated the 10th August 1951.

A.-Cr.
M.W.V.
1/8.

R.I. No. 16422, dated 7-8-51.

Submitted.

In this case on the application of one, Shri Natwarlal Baldevdas Patwari the landlord, the Prant Officer, Viramgam Prant, has by his order dated 5-7-1949 directed summary eviction of one Dahya Shiva from S.No. 955 of Vatva village, under section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948. The Revenue Department considers that Government is not invested with the revisional jurisdiction in this case and that it would be the B.R.T. that can interfere with the order of the Prant Officer dated 5-7-1949.

2. The question raised for R.L.A's consideration is whether it is competent for Government to exercise revisional jurisdiction under section 76 of the Act, in this case.

4-Cs.

M.V.V.
1/8/56.

Legal Department.

The view taken by the Revenue Department is correct (see Additional Secretary's opinion No.3384, dated the 23rd February 1951).

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 12955, dated the 11th August 1951.

4-0s.

M.V.V.
1/8/56.

Office of the R.L.A.

Bom. Tenancy & Agri = cultural Land Act, 1948.

Section 72.

Please see R.L.A's opinion No. 5535 dated 6th April 1951. The point of limitation was argued by the Assistant Government Pleader before the Revenue Tribunal in Revision Application dated 2nd September 1950. The Revenue Tribunal has again held that the limitation for filing the applications by tenants for restoration of lands under section 29(1) of the Bombay Tenancy and Agriculatural Lands Act, 1948, is six months as under section 72 the procedure prescribed under the Mamlatdar's Court Act is to be followed and the limitation is a law of procedure and consequently the limitation prescribed under the Mamlatdars' Court Act will apply to such applications. As pointed out by the R.L.A. in his last opinion, the decision of the Bombay Revenue Tribunal is likely to affect the rights of many tenants and thus frustrate the very object of the legislature. The Revenue Department should, therefore, take early steps to amend the Bombay Tenancy and Agricultural Lands Act providing for a reasonable limitation for applications to be filed under section 29(1) and the amendment should be made retrospective so that the tenants whose applications have been rejected on the ground of limitation may again file applications for restoration of lands. The decision of the Tribunal is too legalistic. But there is no help.

Sd/- J.R.Dhurandhar,
11/8.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 13019, dated the 13th August 1951.

4-Cs.
H.V.V.
1/8/56.

Office of the R.L.A.

The view taken by Secretary, R.D. is correct. The continuance of the management of the ~~xxxx~~ estate would not be legal either under the Bombay Court of Wards Act or the Bombay Tenancy & Agricultural Lands Act, nor can ~~nay~~ any conditions as proposed by the Collector be imposed on the withdrawal. If any circumstances arise hereafter for the assumption of the management under either of the above Acts the question can ~~k~~ then be considered.

Sd/- J.R.Thurandhar,
20/8.

Remembrancer of Legal Affairs.

Secy. R.D.

4-Cs.

M.V.V.
1/8.

Office of the R.L.A.

Bombay Tenancy & Agricultural Lands Act, 1948 - sec. 34 and 3A.

R.L.A. 's No.9254 dated 30th Sept. 1948 and No. 10809 dated 17th November 1948.

The question raised for R.L.A's consideration is whether the one year notices given in March 1950 by landlords of agricultural lands in the areas within the former Baroda State to their tenants for termination of tenancies on the ground of personal cultivation, are valid; or in other words whether an ordinary tenancy can be terminated by one years notice pending its ripening into protected tenancy under section 3-A, of the Bombay Tenancy Act, 1939 as continued in force by the Schedule to the Bombay Tenancy and Agricultural Lands Act 1948.

2. The Bombay Tenancy and Agricultural Lands Act, 1948, was applied to the Baroda State with effect from 30th July 1949 and according to the said section 3-A as modified in its application to the Baroda State, every tenant shall be deemed to be a protected tenant with effect from 1st August 1950 unless his landlord has made an application to the Mamlatdar for a declaration that he is not a protected tenant. Section 34 empowers a landlord to terminate the tenancy of a protected tenant inter alia on the ground of personal cultivation after giving a years notice to the tenant. It is clear from this section that what is authorised to be terminated is the tenancy of a protected tenant and therefore it is essential that the tenant must be a protected tenant on the date of the notice. A right to be deemed to be a protected tenant at some future date, even though vested it may be in the tenant on the date of the notice, would not bring his case within the purview of this section.

In his opinion No.9254 dated the 30th September 1948 as clarified by No. 10809 dated the 17th November 1948 the R.L.A. has held that ordinary .....

agricultural tenancy (other tahb a tenancy falling under section 23 of the Bombay Tenancy Act, 1939) under section 2-A could be terminated pending its ripening into a protected tenancy under section 3-A and that there was no reason why a year's notice should not be considered adequate for that purpose. In the present case the tenants appear to have been statutorily raised to the status of protected tenants with effect from 1st August 1950. The notices are given in March 1950 and were to terminate in March 1951. The tenancy terminates not on the date of issue of the notice but on the expiry thereof. Since the tenancies were not terminated before 1st August 1950 on which date the tenants became protected tenants those notices must be deemed ineffectual and invalid.

The view at 'A' on page 7 ante, is correct.

Sd/- J.R.Dhurandhar,
23/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11732, dated the 24th July 1951.

4-Cs.

M.V.V.
2/8.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

Section 20.

Landlord whether prohibited from cutting trees.

The question raised for R.L.A's consideration is whether in view of sections 19 and 20 of the Bombay Tenancy and Agriculatural Lands Act, 1948, the landlords are prohibited from cutting the trees naturally growing on the land.

2. Section 19 deals with trees planted by the tenant; and is not therefore relevant for the present reference. Section 20 provides that the tenant shall during the continuance of the tenancy be entitled to two thirds of the total produce of trees naturally growing on the land, the landlord being entitled to one third of the produce of such trees. It has been held that where trees are not excepted from the lease, and a power is not reserved to the lessor to enter and fell them it is clear that he has no right to do so, as the lessee has an interest in their fruit and shade. I Id. Rays. 552: (By the Wood and Jarman on Leases: p.81); so also it has been held that so long as the trees stand the raiyat is entitled to the use and enjoyment of them and the landlord is not entitled to disturb that possession. (See A.I.R. 1936 Patna 38.) It therefore follows that when under section 20 the usufruct of the trees is statutorily guaranteed to the tenant, the landlord's right to cut the trees which is incidental to the proprietorship of the land and to destroy the corpus would be deemed to have been abrogated; and an action for cutting such trees by the tenant would lie even against the landlord.

Sd/- J.R.Dhurandhar,
13/8.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 13092, dated the 14th August 1951.

4-Cs.
M.V.V.
2/8.

Legal Department.

Levy of local fund cess
Bombay Local Boards Act, 1923.

Bombay Tenancy & Agricultural Lands Act, 1948 and Bombay Taluqdari Tenure Abolition Act, 1949.

The Civil Judge's statement that the local fund cess is levied by Government under section 6 of the Bombay Local Funds Act, 1869 is not correct. That Act has been repealed by section 2 of the Bombay Local Boards Act, 1923 and the local fund cess is now levied under section 93 of the latter Act. It is true that it has been held in Ranga vs. Subs Hegde, 4 Bom. 473, that it is the intention of the legislature that local fund cess should ultimately be paid by the tenant and that this view has been endorsed in 17 Bom. 54 and 422. These decisions will, however, be no longer binding in view of the express provisions of section 11 of the Bombay Tenancy and Agricultural Lands Act, 1948 which not only prohibits levy of cess etc. but expressly prohibits the landlord from recovering from the tenant anything other than the rent lawfully due in respect of the lands. It is true that the local fund cess is not levied by the taluqdar but by the Government; but if the taluqdar tries to recover the same from the tenants, it would be in turn a levy on the tenants which is forbidden by section 11 of the Bombay Tenancy and Agricultural Lands Act. Consequently it would not be open to the taluqdar to recover the cess from his tenants. This position does not appear to be affected by the Bombay Taluqdari Tenure Abolition Act, 1949.

Sd/- B.D.M.

Additional Secretary to Government

U.R. to R.D. No. 13881, dated the 29th August 1951.

4-Cs.
M.V.V.
2/8.

Office of the R.L.A.

In view of the fact that the tenants were parties to the compromise decree in execution of which they were evicted through Court, they cannot have ~~any~~ any genuine grievance. If they have any, the proper course for them would be to move the Civil Court which passed the decree for a review for restoration of possession of lands on the ground that in view of section 29(2) of the Bombay Tenancy and Agricultural Lands Act the Civil Court had no power to evict them.

Sd/- J.R.Dhurandhar,
28/8.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 13883 dated the 29th August 1951.

4-Cs.

H.V.V.
2/8.

Legal Department.
R.I.NO.16742 dt.11.8.51.

Submitted.

2. It appears that in the fire that broke out on 12-2-1951 at Khilkuva Cempt of the Dhadhalia estate the houses of nine khedutş of the ~~xxxx~~ estate have been gutted; and the Collector and Court of Wards, Banas Kantha desires to grant free tember to the khedutş for reconstruction of their houses out of the forests of the estate, which is under his management, under the provisions of the Bombay Court of Wards Act, 1905. He has however doubted whether it would be competent for him to sanction the free grant of timble from the forests of the estate under the powers conferred upon him by entry 53 in the Manual of Financial Powers (Financial Publication No. VII) in cases where the management of the estate has been assumed either under the Bombay Court of Wards Act, 1905 or the Bombay Tenancy and Agricultural Lands Act, 1948 and has solicited Govt. orders in the matter.

The question for R.L.A's consideration is whether in cases where an estate has been under the management of the Collector as Court of Wards under the provisions of the Bombay Court of Wards Act, 1905 it would be competent for the Collector to sanction free grant of timber out of the forests of the estate under entry 53 in Manual of Financial Powers, for the relief of poor people of the estate, whose houses have been gutted by fire.

Sd/-
14/8.

D.S.(C.L.)

4-Cs.
M.V.V.
2/8.

Legal Department.

Bombay Tenancy & Agricultural Lands Act, 1948, Section 58.
Bom. Court of Wards Act. Section 27.

Managers power to give in Charity.

Admittedly the property taken over by the Court of Wards under the Bombay Court of Wards Act, 1905, or the property taken over for management under Chapter IV of the Bombay Tenancy and Agricultural Lands Act, 1948, has to be held as trust property and managed as such in the interest of the Ward or the landholder concerned. It is true that under section 27 of the Bombay Court of Wards Act and under section 58 of the Bombay Tenancy and Agricultural Lands Act, the power to manage the property extends even to selling or leasing all or any part of such estate. But the sale or lease of such property would be for a consideration. There is no provision in either of the two Acts empowering the manager to make a gift of any part of the property held in trust for the purposes of charity. It may be that the Khedute whose houses have been accidentally burnt and who have thus been put to loss are the Khedute of the estate and provision for erection of houses for their accommodation is necessary. But, as stated above, the manager of the property has no power to grant free timber of the value of Rs.1,715 for the erection of the houses for the Khedute. Consequently, the grant of timber free of cost to the Khedute would not be permissible under the Bombay Court of Wards Act. Similar would be the position in cases falling under part IV of the Bombay Tenancy and Agricultural Lands Act. The view taken by the Secretary, Revenue Department is correct.

Sd/- B.D.H.

Additional Secretary to Government.

U.R. to R.D. No. 13943 dated 30th August 1951.

4-Cs.

B.V.V.
2/8.

Submitted.

In this case in the execution of the Order of the Mamlatdar dated 23-12-49 in Tenancy Case No. 277 of 1949 the possession of S.No. 381/I of Rethare-Haranax, Taluka Walva was handed over to the applicant Shri Dnyanoo Krishna Mane on 2-6-1950; and he had sown the crop for the year 1950-51. Thereafter on 1-8-1950 one Shri Chandu Tuka More made an application to the Mamlatdar stating that the land has been cultivated by him upto 1946-47; that he was then disposal illegally; and that being a protected tenant in respect of that land, possession should be restored to him after summarily evicting Shri Mane under section 84 of the Bombay Tenancy and Agri. L. Act, 1948. The P.O. Islampur who made the inquiries found that Shri More had surrendered the land to the landlord in 1947 otherwise than under an order of the Mamlatdar; and that although he was not recorded as a protected tenant under section 3-A in the Record of Rights he still remained as such and had therefore recommended eviction of Shri Mane, under section 84. The Collector thereupon by his order dated 11th December 1950 has directed the summary eviction of Shri Mane and restoration of possession nto Shri More. Possession has accordingly been handed over to Shri More on 22-12-1950 after he deposited a sum of Rs.335/- being the panch valuation of the crops standing on that date, with the village officers for being paid to the evicted tenant, Shri More has now applied to the Collector for a return of the amount deposited by him on the ground that he has paid the rent of Rs.400/- to the landlord. The Collector considers that in view of section 21 of the Mamlatdar's Courts Act the value of the standing crops will have to be paid to Shri Mane

who raised the crops and has raised a question as to who should pay rent to the landlord in these circumstances. The R.D. considers that the order of the Collector under section 84 is not proper since the evicted tenant cannot be said to be xin authorised occupation or wrongfully in possession; but that as Govt. has no revisional jurisdiction the aggrieved party will have to approach the B.R.T.

Regarding payment of rent that Deptt. is of the view that there is no provision in the Act for payment of the rent when action is taken under section 84 and that the provisions regarding costs of standing crops in section 21 of the Mamlatdars' Courts Act would not apply in such cases; and therefore the order of the Collector granting costs to the evicted tenant is wrong. It is therefore proposed to ask the new tenant to approach the B.R.T. The R.L.A. is requested to advise whether the R.D. view is correct.

4-Cs.

M.V.V./2.8.56

Legal Department.

Bombay Tenancy & Agri. Lands Act, 1948.

Sec. 84.

The view taken by the Revenue Department on both the points is correct. The applicant may be advised to apply to the Revenue Tribunal for relief and pending final disposal of his application, the amount of Rs.335/- deposited by the applicant should not be paid to any one.

Sd/- B.D.Mirchandani,
Additional Secretary to Government.

U.R. to R.D. No. 14083, dated 1st September 1951.

4-Cs.
M.V.V.
2/8.

R.I.No. 14932 dt.18.7.51

Submitted.

2. Shri Abdulla Menda is the occupant of S.No.542 of Godhra and the applicant Shri Dhantia has been recorded as a protected tenant thereof. It however appears that for the last 15 to 20 years the applicant has been cultivating only 2/3 rd.portion of this S.No. and the remaining 1/3rd is held under a lease by one Shri Ragadia . In March 1948 Shri Menda had made two applications to the Mamlatdar of Godhra for possession of the S.No. one in respect of the area with Shri Dhantia and another in respect of the area in possession of Shri Ragadia, on the ground of personal cultivation. As regards the portion held by Shri Dhantia the Mamlatdar Godhra's order dated 25.7.1949 directing restoration of possession to the landlord was quashed by the Collector in appeal and the possession thereof has been restored to him.As regards the 1/3rd portion held by Ragadia, the Tenancy Awal Karkun Godhra in Tenancy case No.7[illegible] of 1948 has directed that it should be restored to the landlord(vide his order dated 29.10.1948). No appeal was preferred against this order as Shri Ragadia has migrated to Pakistan in about March 1948. The applicant's main contention in his application to H.H.R.D. is that he has been shown in the Record of Rights as the protected tenant in respect of the whole S.No. and therefore the remaining 1/3 area should be restored to him. The Collector considers inter alia that the T.A.K's order dated 29.10.1948 is illegal as the notice given to Shri Ragadia by the landlord is not a year's notice. He has therefore proposed that this order be set aside by Government and that the tenancy rights of Shri Ragadi over the 1/3rd portion of the said S.No. be declared as evacuee property. The R.D. considers that the applicants claim to the 1/3rd portion is untenable and that since Shri Ragadia has not moved in the matter no action need be taken in this case.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.

The view taken by the Revenue Department is correct.

2. It may incidentally be pointed out that the question whether tenancy rights in respect of agricultural lands can be declared as evacuee property has been referred to the Advocate General and it is still pending with him.

Sd/- B.D.Mirchandani,

Additional Secretary to Government.

U.R. to R.D. No. 14662, dated the 15th September 1951.

4-Cs.

M.V.V.
2/8.

Office of the R.L.A.

Forests - withdrawal of management - Bom. Tenancy & A.L. Act,1948. Sections 44 & 61

No order terminating the management of the forest land can be issued under section 61 of the Bombay Tenancy and Agricultural Lands Act,1948 as the assumption of the management of these lands was ab initio void. Consequently an executive order may be issued releasing these lands from management and steps taken to pay the net mesne profits thereof minus the cost of management to the holder.

Sd/- J.R.Dhurandhar,
21/6.

Remembrancer of Legal Affairs

U.R. to R.D.No. 9965, dated the 22nd June 1951.

4-Cs.
M.V.V.
2/8.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.

Sections 7 & 9(1).

Under sub-section(1) of section 9 of the Bombay Tenancy and Agricultural Lands Act, 1948, any landlord receiving rent from a tenant in terms of service or labour is required within twelve months from the date of the coming into force of the Act to apply to the Mamlatdar for commuting such rent into cash. The question for consideration is whether a landlord who failed so to apply within the prescribed time can recover rent in cash or in kind. The R.D. considers ~~xxxxxxx~~ that the landlord in that case is entitled to recover only cash rent and the quantum of such rent would be in accordance with section 7. The R.L.A. is requested to advise.

2. Sub-section (3) of section 9 provides that notwithstanding anything contained in any agreement, usage, decree or order of a court of any law no landlord shall recover or receiving rent in terms of service or labour after a period of twelve months from the date of coming into force of this Act. The receipt of rent in terms of labour or service in contravention of this provision// has been made pubishable under section 81 of the Act. However, after the period of 12 months from the date of the coming into force of the Act a landlord who has been getting rent in terms of service or labour can recover rent, in accordance with section 7, either in cash or in kind but subject to the maximum rent provided under section 6. There is nothing in section 7 which says that rent must necessarily be recovered from a tenant in cash. If, however, there is a notification issued by Government under section 8(1) in respect of the area in which the landlord's land is situated, then, the landlord, in view of the provisions of section 8(3), can recover rent in lieu of services and labour only in cash.

Sd/- B.D.Mirchandani,
Additional Secretary to Government.

U.R. to R.D. No. 9547, dated the 16th June 1951.

4-Cs./M.V.V./2.8

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

Mamlatdars Courts Act, 1906. Section 23(2).

In the present case admittedly the landlord filed his application under the Mamlatdars' Courts Act, 1906 for possession of the land from his tenant. Consequently, Government has no power to issue any directions in the matter. If the landlord is dissatisfied with the order passed by the Prnat Officer or the interpretation thereof by the Mamlatdar, the only course open to him would be to move the High Court. He should, therefore, be informed that Government having no powers under the Mamlatdars' Courts Act, under which the proceedings in the present case were taken, is unable to ~~fix~~ issue any directions or orders to the Mamlatdar to rehear the case. It is open to the applicant either to apply to the High Court for relief or to take fresh proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948 for the eviction of the tenant on the ground of non-payment of rent after giving due notice to the tenant of termination of the tenancy.

Sd/- J.R.Dhurandhar,
20/6.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9830, dated the 21st June 1951.

4-Cs.
M.V.V.
2/8.

Legal Department.
R.I.No.13411,dt.27-6-51.

Submitted.

2. The Collector of Surat has forwarded the papers underlying Tenancy Case No. 2 of 1949 on the file of the Tenancy Aval Karkun Kamrej and has requested Govt. to exercise revisional jurisdiction under section 86 of the Bombay Tenancy and Agricultural Lands Act, 1948 for correcting the mathematical error in computing the reasonable rent in the order of the T.A.K. dated 23-1-1950. The Collector considers that it would have been competent for the T.A.K. who passed the order to effect the amendment, but since he has been transferred from that place his successor cannot do it. The R.D. view is that Govt. cannot exercise revisional jurisdiction under section 86 in cases under section 12 and that it would be competent for the present T.A.K. to effect the correction, as it is competent for the Court to amend its orders for correcting mathematical errors and that it is immaterial that the T.A.K. who passed the order has since been transferred. The R.L.A. is requested to advise.

4-Cs.
M.V.V.
2/8.

Office of the R.L.A.

Bombay Tenancy and Agri. Lands Act, 1948.

Section 12(5).

Mathematical mistake - Rectification by successor.

The Revenue/ Department view is correct. If the mistake is merely an arithmetical mistake in computing the rent, there will be no objection to the present T.A. Karkun rectifying it.

Sd/- J.R.Dhurendhar,
20/8.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 13531, dated the 23rd August 1951.

4-Cs.
M.V.V.
2/8.

Please See Addl. Secy's opinion No. 14478 dt.11.9.51.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

Section 29(2) and Section 89(2)(b).

In the present case the tenancy terminated by efflux of time before the Bombay Tenancy & Agricultural Lands Act, 1948, but as the Baroda Ordinance came into operation, the possession of the ~~xhmt~~ land could not be taken by the landlord, so long as the Ordinance was in operation. The proceedings were started by the landlord for eviction of the tenant in the Civil Court in March 1949, and the said proceedings are saved by virtue of section 89(2)(b)(ii) of the Bombay Teanncy and Agricultural Lands Act, 1948. Consequently the provisions of that Act would not be applicable. It appears the Collector considers that even though the landlord had obtained a decree for possession he could not take possession otherwise then by an application under section 29(2) of the Bombay Tenancy and Agricultural Lands Act. A similar question was considered by the Bombay High Court in Sudkya Ramji v. Mahammed Isak (52 Bom. L.R. 123) and it was held that : section 24(1A) of the repealed Tenancy Act was not retrospective, and that, the landlord who has obtained a decree in a Civil Court must proceed for execution of the order before the Mamlatdar under section 24(1A) of the Repealed Tenancy Act, was obviously not tenable. That decision will apply to the present case and as the landlord has obtained possession from his tenant in execution of the District Court's decree in the proceedings started before the Bombay Tenancy and Agricultural Lands Act was applied to the area section 29(2) of that Act would have no application and his possession cannot be disturbed. There is, therefore, no scope for challenging the authority of the Civil Court in this case.

Sd/- J.R.Dhurandhar,
12/6.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9305, dated the 13th June 1951.

4-Cs./M.V.V./2.8

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.
Section 29(2).

Whether retrospective.

R.L.A's opinion No. 9305, dated 11-6-1951.

It appears for the reasons given by the High Court for arriving at the decision as their lordships did in the case of Sudkya Ramji v. Mahammed Isak (52 Bom. L.R. 123) which would apply with equal force to the interpretation of section 29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, it cannot be said that this provision is intended to have retrospective effect. The same view has been taken in a Additional Secretary's opinion No. 7833, dated the 17th May 1951 wherein the Revenue Department view that proceedings (Darkhasts) pending on the date on which the Act came into operation are not affected by the Act, was endorsed. It therefore appears that as stated by the Revenue Department the Government instructions based on the previous opinions of the Remembrancer of Legal Affairs will have to be cancelled.

Sd/- B.D.Mirchandani,

Additional Secretary to Government.

U.R. to R.D. No. 14478/, dated the 11th September 1951.

4-Cs.
M.V.V.
2/8.

Draft Reply. Office of the R.L.A.

Under sub -section (1) of section 8 of the Bombay Tenancy and Agricultural Lands Act, 1949, Government has power by notification to declare that the rents payable wholly or partly as crop share in any area ~~xx~~ to which the notification applies shall with effect from the date specified in the notification which shall not be earlier than six months from the date of the notification, be commuted into cash rent. Under sub-section (2) if no rate of commutation has been fixed in the notification the amount of commutation shall be determined by the Mamlatdar in the manner prescribed. In the present case, by Government Notification No. 3490/45 dated the 29th March 1950 issued under sub-section (1) of section 8 Government directed that the rents payable wholly or partly as cropshare in the areas ~~xx~~ of Vyara, Songadh, Nagrol and Mahuwa Talukas of Surat District shall, with effect from 1st October 1950 be commuted into cash rent. Consequently, in view of sub-section (3) of section 8, no rent as crop-share could be levied in the area covered by the Notification after 1st October 1950. Under sub-rule (1) of Rule 5 of the Bombay Tenancy & Agricultural Lands Rules, 1949, a notification issued under section 8(1) is required to be published by the Mamlatdar in the villages concerned by beat of drum for three consecutive days etc. Under sub-rule (3) the areas specified in the notification under sub-section (1) of section 8, in respect of which the rate of commutation has not been fixed by the State Government under sub-section (2) of that section, the landlord whose rent is recoverable wholly or partly as crop share shall on publication of the notification in the regional language under subrule (1) apply to the Mamlatdar

in whose jurisdiction the lands concerned are situated for commutation of rents so far recoverable as crop share into cash. In the present case Government did not fix the rate of commutation in the notification issued under sub-section (1) of section 8. Consequently, the landlords were required to apply to the Mamlatdar for commutation of rents within 3 months from the date of publication of the notification in regional language under sub-rule (1). But the Mamlatdar did not give publicity to the notification in the required manner till sometime in the 1st week of December 1950. The landlords could, therefore, apply within three months from the 1st week of December 1951 for commutation of rents. In the circumstances, although the notification dated 29th March 1950 prohibited the landlords from recovering crop share rents after 1st October 1950, that notification must be regarded as bad in law for want of publicity by the Mamlatdar as provided by rule 5(1). It would be advisable, therefore, to amend the notification under section 8(1) dated 29th March 1950 and specify therein a date not earlier than six months after 1st week of December as the date from which the crop share rents shall be commuted into cash instead of 1st October 1950.

2. By G.M.R.D.No. 13490/49 dated the 10th February 1950 issued under sub-section (2) of section 6 of the Bombay Tenancy and Agricultural Lands Act, Government fixed the lower rate of the maximum rent in respect of Vyara, Songadh, Mangrol talukas and Mahuva of the Surat District, at five ---- times the assessment, R.D. is of the opinion that in cases where no assessment or a concessional assessment is leviable in respect of a particular survey number, the maximum rate of rent should

be five times the assessment which would have been payable in respect of that land if no exemption or concession in assessment x was granted. R.L.A. is requested to advise, whether the view taken by R.D. is correct. The maximum rent fixed by the aforesaid Government notification is equal to five times the assessment. The notification does not mention as to how the maximum rent should be assessed in cases whether no assessment was levied or where concessional assessment was levied. Presumably the aforesaid notification can be construed as intending to fix the maximum rent at five times the assessment which could have been ordinarily levied on the land even though it is exempt wholly or partly from the assessment. But the notification as it stands does not clearly mention it. In this connection attention is invited to the language of section 93(1) clauses (b) and (c) of the Bombay Local Boards Act, 1923. It appears desirable to amend the notification properly for the purpose.

Sd/- J.R.Dhurandhar,
12/7.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 11090, dated the 13th July 1951.

4-Cs.
M.V.V.
3/8.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

Sections 29(2) and 25.

Bombay Agricultural Debtors Relief Act, 1947.

Section 24(1).

In all these three cases it appears that important legal points are involved.

In case No.1 it appears that the owner sold his land unconditionally to one Shri Kantilal and gave symbolic possession of the land to the vendee. However, the vendor continued to remain in possession after executing a rent note. He failed to pay the rent whereupon the landlord applied to the Mamlatdar for recovery of possession under section 29 sub-section (2) read with section 25 of the Bombay Tenancy and Agricultural Lands Act, 1948. It appears that the vendor has, however, filed an application under the Bombay Agricultural Debtors Relief Act for settlement of the debt on the ground that the said transaction was in the nature of a mortgage. The Tenancy Aval Karkun, before whom the application under section 29 sub-section (2) of the Bombay Tenancy and Agricultural Lands Act was filed for possession of the land, dismissed the application on the ground that the matter was already before the civil court. An appeal against that order is filed before the Collector. R.D. appears to be of the view that the relationship of the landlord and tenant exists and therefore the tenancy Court is competent to take cognisance of the landlord's application under section 29 sub-section(2), and if there was an oral agreement that the land should be restored to the tenant when he pays up the sale price to the purchaser, it is for him to establish his claim in a court of law. The R.L.A. is requested to advise.

Under section 51-A of the Bombay Agricultural Debtors Relief Act, 1947, the civil court's jurisdiction is ousted in respect of any matter pending before the court under that Act. The vendor appears to have made an application under section 24 sub-section (1)

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...for a decleration that the sale transaction was in the nature of a mortgage and for the settlement of the debt. If the court holds that the sale transaction was in the nature of a sale mortgage, it would certainly scale down the debt and settle it under the provisions of that Act and the possession of the aland with the vendor would not be disturbed. In view of that application under the Bombay Agricultural Debtors Relief Act being pending, it appears desirable that the application filed under section 29 of section (2) of the Bombay Tenancy and Agricultural Lands Act should be stayed; for if the transaction is considered to be in the nature of a mortgage the liability of the vendor to pay interest during the period he is in possession of the land will be taken into account in settling the claim against him, in which case the question of payment of rent would not arise.

In the second case it appears that one Shri Akbar Jiwaji mortgaged his land with possession to Shri Vanamalidas and retained possession of the land on executing a rent note. The mortgagee has applied to the Tenancy court for recovery of possession under section 29 sub-section (2) of the Bombay Tenancy and Agricultural Lands Act on the ground that the mortgagor failed to pay rent. The mortgagor appears to have filed an application under the Agricultural Debtors Relief Act for settlement of the debt. However, R.D. considers that the Tenancy court is competent to entertain the landlord's application filed under section 29 sub-section (2). As stated above the mortgagor was entitled to file an application under the Bombay Agricultural Debtors Relief Act for settlement of his debt and in the application filed by him the rent payable by him in lieu of interest will be taken into account in settling the debt under that Act. Consequently, the mortgagee's application

for possession under section 29 sub-section (2) may also be stayed pending the decision of the civil court under the Bombay Agricultural Debtors Relief Act.

In the third case the facts are also similar to the second case with this difference that while in the second case the mortgagor had applied to the court under the Bombay Agricultural Debtors Relief Act, in the present case there is no such application. R.D. considers that the application under section 29 sub-section (2) of the Bombay Tenancy and Agricultural Lands Act should be proceeded with. If no application for the settlement of the debt either by the debtor or by the creditor had been filed within the prescribed time for the settlement of debt under the Bombay Agricultural Debtors Relief Act, 1947, that debt is extinguished (see section 15 sub-section (1)). If in the present case no such application is filed by either party the mortgage debt is extinguished with the result that the mortgagor not being liable to redeem the mortgage would be deemed to be holding the land free of such mortgage. The rent under the rent-note being payable in lieu of interest on the mortgage and the mortgage debt itself being extinguished, it appears that the mortgagor would not be liable to pay rent and their relationship of landlord and tenant would cease to exist. The application under section 29 sub-section (2) for possession of the land by the mortgagee would not, therefore, be competent.

Sd/- J.R.Dhurandhar,
10/6.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 9633, dated the 18th June 1951.

4-Cs.
M.V.V.
3/8.

Office of the R.L.A.

Stay of proceedings under - Bombay Tenancy & Agricultural Lands Act, 1948. in view of applications under Bombay Agricultural Debtors Relief Act, 1947.

Strictly speaking it is not necessary that proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948 whether before the Mamlatdar or the Collector in appeal must be stayed in cases where applications for adjustment of debts are made under the Bombay Agricultural Debtors Relief Act by one of the parties to the proceedings. The intention in keeping the proceedings in await in such cases is to maintain the status-quo with a view to avoid a possible injustice to the vendor tenant by any adverse decision in these proceedings when his application under the Bombay Agricultural Debtors Relief Act is pending. It was for this purpose that the R.L.A. expressed in his last opinion No.9633 dated 18th June 1951 that it was desirable that applications under section 29(2) be stayed. Since in the first case under consideration the vendor tenant has already been dispossessed under the order of the Mamlatdar dated 22-9-1950 a stay of the appeal pending before the Collector would serve no purpose. It appears therefore desirable that the Collector should proceed with hearing of the appeal on merits.

2. In the second case, the facts are almost similar to the first one with the difference that the landlord had applied for possession under section 34 for personal cultivation. Since the vendor tenant has been dispossessed, the Collector may proceed to hear the appeal on merits in this case also. It would be open to the Collector to set aside the orders and remand the cases to the Mamlatdars with a direction that they may be heard after the applications under the Bombay Agricultural Debtors Relief Act are disposed of.

Sd/- J.R.Dhurandhar,
8/10.

Remembrancer of Legal Affairs.

U.H. to R,D. No 15995, dated the 8th October 1951.

4-Cs./M.V.V./3.8

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.

Section 29(1).

The view taken by R.D. is not correct. To entitle a tenant to ask for restoration of land under section 29(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, he must first prove that he is the tenant of the land. 'Tenant' as defined in section 2(18) means an agriculturist who holds the land on lease and includes a person who is deemed to be a tenant under the provisions of this Act. Section 3 provides that the provisions of Chapter 5 of the Transfer of Property Act shall, in so far as they are not inconsistent with the provisions of this Act apply to tenancies and leases of lands to which the Act applies. 'Lease' as defined in section 105 of the Transfer of Property Act is a transfer of right to enjoy such property etc. and the transferer is called the Lessor and the Transferee is called the lessee. It would therefore follow that unless there has been a transfer of land there can be no lease. As held by the Bombay High Court in Ramsing Harsing v. Bai Bhanba (27 Bom. L.R. 626) mere execution of a rent note unaccompanied by transfer of possession does not transfer interest in the property. It is therefore apparent that there being no transfer of possession of the land in the present case there is no tenancy. Consequently, section 29(1) of the Bombay Tenancy and Agricultural Lands Act, 1948 will not be applicable and the tenant will have no right to ask for possession of the land. If he wants to enforce his right he will have to approach the Civil Court for specific performance of the contract to lease the land.

Sd/- B.D.Mirchandani,
Additional Secretary to Government.

U.R. to R.D. No. 14733, dated the 17th September 1951.

4-Co.
M.V.V.
3/8.

Office of the R.L.A.

Statement of the case.

Kharda Nos. 76, 187, 189/1, 202, 79, 180 and 217/1 of Hannania (Vintej) village in the Halol Taluka belonging to Shri N.S. Desai, Inamdar of the village were notified as evacuee property under the Bombay Evacuee (Administration of Property) Act, 1949, as the tenants cultivating the lands have migrated to Pakistan and the same were vested in the Custodian under section 4 of that Act. In his letter dated 3rd December 1949, the Inamdar has requested Government for resteration of possession of the lands to him. He has stated therein that when any cultivator voluntarily relinquishes the land or gives madheri according to the practice obtaining hitherto in the village, the lands always returned to him as the owner and the land so reverted was given by the owner inamdar to any cultivator. He has thus tried to make out that there has been an implied surrender by his tenants. On these facts the R.L.A. in his opinion No. 8739 dated the 26th June 1950 observed thus:

"It is clear from this provision that the tenancy rights of theexx evacuee whether as permanent tenants or protected tenants to properties which have vested in the Custodian continue and neither the evacuee nor him the Custodian can be ejected from these lands on any grounds such as personal cultivation. The assumption of the tenancy rights by the Custodian in the present case appears to be correct and there is no question of resteration of these rights to the Inamdar."

2. On a subsequent reference the Additional Secretary in his opinion dated the 29th November 1950 relying on the decision in Ostler vs. Henderson (7 Q.B.D. page 575) held that the mere fact that the tenants have left for Pakistan will not alone be sufficient to amount to an implied surrender by tenants of their tenancies, within the meaning of clause (e) and (f) of section 111 of the Transfer of Property Act, even if the tenants are held to be protected tenants under the Bombay Tenancy and Agricultural Lands Act, 1948.

P.T.O.

Government however considers that in such cases the tenancies cannot survive, and at the desire of H.M. R.D. the question whether a protected tenant's rights under the Bombay Tenancy and Agricultural Lands Act, 1948, are personal and are extinghished by his leaving the land was considered by the R.L.A. in his opinion dated 17-5-1951. In this opinion after distinguishing the case in Brown vs. Brash and Ambrose (1948) 2 K.B. 247 the R.L.A. observed thus:

"The Bombay Tenancy and Agricultural Lands Act, 1948, differs in many respects from the English Rent Restrictions Act. Under section 32, sub-section (1): "Notwithstanding anything contrary in any law, usage or contract, but subject to the provisions of section 6, a protected tenant shall, at any time, be entitled to purchase from the landlord the land held by him as a protected tenant." Under section39: "A protected tenant can apply for recovery of possession from his landlord if he has failed to comply within a reasonable time with the provisions of section 37 i.e. if he has failed to use the land for any of the purposes specified in the notice given under sub-section (1) of section 34. Section 40 provides for continuation of tenancy on the death of a protected tenant. Reading these provisions together it is apparent that a protected tenant gets a vested interest in the demised land, which interest can be inherited by his heir or heirs. Section 3 provides that the provisions of Chapter V of Transfer of Property Act, 1882, shall, in so far as they are not inconsistent with the provisions of this Act, apply to the tenancies ~~kyrikx~~ and leases of lands to which this Act applies. As stated by the Additional Secretary in his last opinion, the ordinary principle contained in Oastler vs. Henderson (7 Q.B.D. p.575) will apply to such leases and the mere fact that the tenants have left for Pakistan will not alone be sufficient to amount to an implied surrender by tenants of their tenancies even if the tenants are held to be protected tenants. This inference is further supported by section 18 of the Administration of Evacuee Property Act, 1950, whereunder the tenancy rights of an evacuee are not to be extinguished. In the circumstances, the rights of a protected tenant are not merely personal rights and they do not extinghish even if such tenant leaves the land. Section 65, sub-section (1) of the Bombay Tenancy and Agricultural Lands Act empowers Government to assume management of the land in the event of its being left uncultivated through the default of the tenant, or any other cause whatsoever, for any two consecutive years."

4. Since however the question is an important one and Government desires that the matter should be referred to the Advocate General - I request you to express your opinion on the ~~xxxxx~~ case.

Sd/- J.R.Dhurandhar,

Remembrancer of Legal Affairs.

U.R. to the Advocate General Bombay, No. 9912, dated the 22nd June 1951,

4-Cs./M.V.V.
3/8/56.

L.R. to the Advocate General

No.9912, dated 22nd June 1951.

The Inamdar of the village Hanmania in Halol Taluka applied to the Government for restoration to him of certain lands which were being cultivated by tenants who migrated to Pakistan. His application has been based upon the theory of an implied surrender. The R.L.A. was of the opinion that the rights of a protected tenant under the Tenancy Act of 1948 are not merely personal rights and are not extinguished even if the tenant leaves the land. It would appear that by reason of the provisions of Sections 6,39 and 40 of the Act a protected tenant gets a vested interest which is capable of being inherited by his heirs since under Section 3 the provisions of Chapter V of the Transfer of Property Act are made applicable to the tenancy. On the tenant's leaving for Pakistan and becoming an evacuee, his interest will vest in the Custodian of Evacuee Property. The tenant's rights are not purely personal as they would be in the case of a bare licensee. The very fact that there is an interest created in land creates 'property'. Ordinarily 'property' is heritable and transmissable. That principle is judicially recognized in the case of Castâar vs. Hinderson, 7 Queen's Bench Division, page 575.

Reference has been made to the case of Brown vs. Brash, 1942, 2 King's Bench 247. That was a case which dealt with the tenant and his rights under the English Rent Restrictions Act and the point in law was whether the benefit of that Act could be taken by a non-occupying tenant. In my opinion, that case is not of any assistance. The real point is - - whether the tenants in question were protected tenants and it would appear from the notes at page 71 that they were in fact protected tenants. If so, the interest of the tenants is property and must vest in the Custodian. A surrender cannot be implied from the mere fact of their having left for Pakistan.

4-Cs.

M.V.V.
3/8/56.

Legal Department.

A copy of the U.R. to the Advocate General No.9912, dated the 22nd June 1951, together with a copy of the opinion of the Advocate General (Shri C.K.Daphetary) is x forwarded herewith.

Sd/- B.D.Mirchandani,

Additional Secretary to Government.

U.R. to R.D. No. 14852, dated the 18th September 1951.

4-Cs.
N.V.V.
3/8.

R.I.NO.16206 dt. 4-8-51.

Submitted.

2. It appears S.No.43/2 of Palasdad village, Taluka Erandol measuring acres 8 - 9 remained uncultivated during 1947-48 and only a portion thereof measuring Acres 2 - 29 was cultivated during 1948-49. For this the management of the whole S.No. was assumed under section 65 of the Bombay Tenancy and A.L. Act, 1943. The Collr. has raised a question whether in these circumstances the assumption of management of the whole S.No. is proper. On this case the U.S., R.D. observes:

"With reference to the object and scope of the provisions, the terms "any land" may include even a part of a survey number. In the present case the S.No. in question measure 8 Acres and 9 gunthas out of which only 2 Acres and 29 gunthas were cultivated. The remaining land though cultivable remained uncultivated for two consecutive years and that area can be taken up under section 65 and not the whole survey number."

The R.L.A. is requested to advise.

4-Cs.
M.V.V.
3/8.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.

Sections 2(8) and 65(1).

Seen and returned.

2. The view taken by the Under Secretary, Revenue Department in his note date the 2nd August 1951, is correct. It is presumed that the larger area of the Survey Number was left uncultivated for no valid reason such as leating it fellow under rotational cultivation.

Sd/- B.D.Mirchandani,
Additional Secretary to Government.

U.R. to R.D. No. 15124, dated the 22nd September 1951.

4-Cs.

M.V.V.
3/8.

Office of the R.L.A.

The view taken by the Revenue Department is correct. Section 64 of the Act applies only to voluntary sales of agricultural lands by the landlords and has no application to sales of such lands in execution of decrees of Civil Courts which are involuntary sales. (See R.L.A's opinion No. 4213, dated the 14th March 1951).

Sd/- J.R.Dhurandhar,
24/9.

Remembrancer of Legal Affairs.

U.R. to R.D. NO. 15332. dated the 25th September 1951.

4-Cs.
H.V.V.
3/8.

Statement of the Case.

The question for consideration is whether the rights acquired by the tenants under the old Bombay Tenancy Act, 1939 in respect of agricultural lands which are situated within the area referred to in section 88(1) sub-section (1) clause (c) of the Bombay Tenancy and Agricultural Lands Act, 1948 survive and if so under what provisions should the landlords apply for possession of the said lands if they want them for their own cultivation.

2. This question was considered by the Additional Secretary in his opinion No. 10154, dated the 6th September 1949 wherein it was stated as follows:

"Section 88 sub-section (1) clause (c) of the Bombay Tenancy and Agricultural Lands Act, 1948, provides that nothing in the foregoing provisions of the Act shall apply to any area within the limits of Greater Bombay and within the limits of the Municipal Boroughs of Poona City and Suburbas, Ahmedabad, Sholapur, Surat and Hubli and within a distance of two miles of the limits of such boroughs; but section 89 which repeals the Bombay Tenancy Act with exception of sections 3,3(a) and 4 with certain modifications provides in sub-section (2) clause (b) that nothing in this Act or any repeal effected thereby shall save as expressly provided in this Act affect or be deemed to effect any right, title, interest acquired or accrued before the commencement of this Act. If, therefore, any person has acquired the rights of the protected tenant under the Bombay Tenancy Act, 1939, his rights will not be affected by the repeal of the said Act. Under section 31 of the Act of 1948 such persons are to be recognized as protected tenants. If, therefore, the landlord has to determine the protected tenancy of such tenants he will have to do so under section 34 of the present Act. The only effect of section 88 sub-section (1)

 clause (c).....

clause (c) is that no new rights of a protected tenant can be acquired within the area specified in that clause."

The legal position stated in this opinion was clarified in Additional Secretary's opinion No. 11338, dated the 11th October 1949 thus :

"Lands falling under clause (c) of section 88, sub-section (1) of the Bombay Tenancy and Agricultural Lands Act, 1948, though exempt from the provisions of that Act are by virtue of section 89, sub-section (2), clause (b), sub-clause (i) subject to any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act. The right of protected tenancy acquired under the Bombay Tenancy Act, 1939, in respect of these lands is subject to the liability of the tenancy being determined under section 7 of that Act which corresponds to section 34 of the present Act. Consequently, the protected tenancy of these lands is liable to be terminated under section 34."

It was further stated in R.L.A's opinion No. 657 dated the 16th January 1950 that when the landlords can enforce their rights under the Bombay Tenancy and Agricultural Lands Act, 1948 the tenants can equally enforce their rights under that Act and that it would not be necessary for them to resort to a Civil Court.

3. It has been contended by the Revenue Department that since the Tenancy Acts are no longer in force in the areas to which section 88(1) (c) of the Act of 1948 applies, the tenants and landlords in those areas would have to seek redress under the ordinary law.

4. As the point is important and Government desires that the matter should be referred to the Advocate General, I request you to express your opinion on the case.

Sd/- J.R.Dhurandhar,
Remembrancer of Legal Affairs.

U.R. to the Advocate General No. 7686, dated the 15th May 1950

4-Cs./M.V.V./3.8

U.R. to the Advocate General No.7686,
Dated the 15th May 1951.

OPINION.

Section 89 of the Act of 1948 repeals the whole Act of 1939 except Section 3, 3A and 4. Section 31 of the Act of 1948 specifically provides that for the purpose of the Act of 1948 a person shall be recognised to be a protected tenant if such person has been deemed to be a protected tenant under Section 3, 3A or 4 of the Bombay Tenancy Act. The Schedule mentioned in Section 89 in the 4th column does not mention about the area. If the land was held by a tenant within the area mentioned in the Act of 1939 and if a tenant was a protected tenant under the Act of 1939 it was a right acquired by the tenant. Section 89 of the Act of 1948 which repeals the Act of 1939 specifically provides that nothing in that Act or any repeal affected thereby shall affect or be deemed to affect any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of the Act of 1948 or any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of that Act and such proceedings

 shall be.....

shall be continued and disposed as fi the said Act had not been passed. There is nothing in the Act of 1948 which deprives the tenant who has become a protected tenant of his rights as a protected tenant under the Act of 1939. I am of opinion that the Act of 1948 protects all the rights acquired by a protected tenant under the Act of 1939. The only effect of Section 88 in ~~my~~ my opinion is that no tenant can acquire rights of a protected tenant within the area specified in the Section. Section 34 provides for termination of tenancy by the landlord. Even if a person is a protected tenant under the Act of 1939 it is open to the landlord to terminate the tenancy under the provisions of Section 34 and the procedure provided for in ~~Chapt~~ Chapter VI and the Rules has to be followed. I am of the opinion that the ban upon the jurisdiction of the Civil Court applies to such a case and in the case of a termination of tenancy of a tenant who is a protected tenant under the Act of 1939 the landlord has to follow the procedure prescribed under the Act of 1948 and the Rules made thereunder. I am of opinion that all procedural law is retrospective in a operation.

4-Cs./K.V.V./4.8 Sd/- 9.9.51

Legal Department.

A copy of the U.R. to the Advocate General,No. 7686, dated the 15th May 1951 together with a copy of the opinion expressed by the Advocate General (Shri C.K. Daphtary) dated the 9th September 1951 is forwarded herewith.

Sd/- B.D.Mirchandani,

Additional Secretary to Government.

U.R. to R.D.No. 14855, dated the 18th September 1951.

4-Cs.
M.V.V.
4/8.

R.L.No. 19384 dt. 18/9/51.

Submitted.

2. Please see the letter of the Collector of Ratnagiri dated the 19th August 1951.

In this case it appears under contract of lease Agricultural land has been granted by the landlord for a period of ten years ending on the 31st March 1954. and the tenant has been recorded as a protected tenant under section 3-A of the Bombay Tenancy Act, 1939. With a view to terminate the Tenancy for personal cultivation the landlord it appears gave a year's notice to the tenant as required by section 34 of the Bombay Tenancy and Agricultural Lands Act, 1948 and after expiry of the notice period made an application to the Mamlatdar in this behalf. The Collector of Ratnagiri considers that in view of section 30 the tenancy cannot be terminated before the 31st March 1954 the contracted period. The R.L.A. is requested to advice whether the view taken by the Collector is correct.

4-C.
M.V.V.
A/S.

Legal Department.

Bombay Tenancy & Agricultural Land Act, 1948.

The view taken by the Collector of Ratnagiri at 'A' of his letter dated the 19th August 1951, is correct. (See R.L.A's Opinion (para.4) ✓ No.6217, dated 17th April 1951).

Sd/- B.D.M.

Additional Secretary to Government.

U.H. to R.D. No. 15496, dated the 28th September 1951.

4-Cs.

M.V.V.
4/8.

Office of the R.L.A.

Bombay Tenancy Act, 1939. Section 7(1) & (5). Bombay Tenancy and Agricultural Act, 1948 Section 89. Whether Government has revisional powers.

In his opinion dated the 9th September 1951, the Advocate General has held that there is nothing in the words of section 89 of the Bombay Tenancy and Agricultural Act, 1948 to justify any distinction between an application under sub-section (1) of section 7 of the Act of 1939 and an application under sub-section (5) of that section. In view of this opinion the Bombay Revenue Tribunal alone will have jurisdiction in the matter and Government will have no revisional jurisdiction. It would not, therefore be feasible for Government to interfere with the orders of the Tenancy Aval Karkun and Prant Officer as proposed in the Revenue Department note. The legal position as expounded by the Advocate General may be brought to the notice of the Bombay Revenue Tribunal and it may be requested to review its decisions That being done the present difficulty would disappear

Sd/- J.R.Dhurandhar,

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15991, dated the 8th October 1951.

4-Cs.
N.V.V.
4/8.

Legal Department.

R.I. No. 16316, dated 6.8.51.

Submitted.

It appears that in 1930-31 the management of Shri Ramji Mandir Temple at Chansad in the Baroda District was assumed by the former Baroda Government under the provisions of section 7(1) of the Baroda Public Institutions Act, as the Pujari of the Temple was alleged to have mismanged the properties and mxm mortgaged with possession certain lands in contravention of section 12(1) thereof. The management continues even after the merger of the Baroda State. It appears that even after the management of the temple was assumed the possession of the mortgage or the tenants claiming under him was not disturbed. After the merger of the State the villagers requested the Collector of Baroda to restore the lands to the temple from the tenants who were holding under leases from the mortgagee. The Collector considered that the action of the Pujari in mortgaging the land was in contravention of section 12(1) and by his order dated 16-3-1951 ordered the summary eviction of the mortgagee. The dispossessed tenants have now approached Government for restoration of the lands to them. The U.S. R.D. considers that since the estate is under Government management it was not equitable to evict the persons who were cultivating the lands and that they should have been continued as the tenents of the management on payment of rent. The R.L.A. is requested to advise.

4-Cs.

M.V.V.
4/8.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.

Sec. 29(1).

The tenants have been already evicted. The proper course for them would be to apply under section 29(1) of the Bombay Tenancy and Agricultural Lands Act, 1948 so that their rights, if any, might be considered by the proper authorities. They may therefore be advised accordingly.

Sd/- B.D.Mirchandani,
Additional Secretary to Government.

U.R. to R.D. No. 15992 dated the 8th October 1951.

2-Cs.

M.V.V.
4/8.

[redacted]

Office of the R.L.A.

Bom. Tenancy and Agricultural Act, 1948. Section 34.

R.L.A's opinion No. 11732 dated 24th July 1951.

The point raised by Revenue Department is of some importance in view of the fact that a notice of termination of tenancy before it has ripened into a protected tenancy need not be on the ground of personal cultivation as is required to terminate a protected tenancy. Consequently the Remembrancer of Legal Affairs opinion No.11732 dated the 24th July 1951 may be brought to the notice of the Bombay Revenue Tribunal for its consideration for what it is worth.

Sd/- J.R.Dhurandhar,
8/10.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15998, dated the 8th October 1951.

4-Cs.
M.V.V.
4/8.